

# **EXHIBIT 34**

IN THE U.S. DISTRICT COURT FOR MARYLAND,  
SOUTHERN DIVISION

+ + + + +

---

IN THE MATTER OF:

BEYOND SYSTEMS, INC.

Plaintiff,

v.

WORLD AVENUE USA, LLC

Defendants.

---

:  
:  
:  
:  
:  
:  
:  
: Case No.  
: PJM 08 cv 0921  
:  
:  
:  
:  
:

Thursday,  
September 30, 2010  
Pompano Beach, Florida

DEPOSITION OF:

DALE S. HARROD

called for examination by Counsel for the  
Plaintiff, pursuant to Notice of Subpoena, in  
the Mumbai Conference Room of the Forum Hotel,

located at 600 SW Third Street, Pompano Beach,  
Florida, when were present on behalf of the  
respective parties:

Page 2

## APPEARANCES:

On Behalf of the Plaintiff, Beyond  
Systems, Inc.:

of: STEPHEN H. RING, ESQ.  
Stephen H. Ring, PC  
506 Main Street  
Suite 215  
Gaithersburg, MD 20878  
Tel: (301) 563-9249  
Fax: (301) 563-9639  
Email: shr@ringlaw.us  
MICHAEL S. ROTHMAN, ESQ.  
of: Law Office of Michael Rothman  
401 East Jefferson Street  
Suite 201  
Rockville, MD 20850  
Tel: (301) 251-9660  
Fax: (301) 251-9610  
Email: mike@mikerothman.com  
On Behalf of the Defendant, World Avenue  
USA:

of: SANFORD M. SAUNDERS, JR., ESQ.  
Greenberg Traurig, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
Tel: (202) 331-3130  
Fax: (202) 261-0150  
Email: saunderss@gtlaw.com  
of: JOHN L. MCMANUS, ESQ.  
Greenberg Taurig, LLP  
401 East Las Olas Boulevard  
Suite 2000  
Fort Lauderdale, FL 33301  
Tel: (954) 765-0500  
Fax: (954) 765-1477  
Email: mcmanusj@gtlaw.com

Page 4

## TABLE OF CONTENTS

WITNESS DIRECT CROSS REDIRECT RECROSS

DALE HARROD

By Mr. Ring 5  
By Mr. Saunders 65

Page 3

On Behalf of the Deponent, Dale Harrod:

MARK E. STEIN, ESQ.  
Of: Higer, Lichter & Givner LLP  
18305 Biscayne Boulevard  
Suite 402  
Aventura, FL 33160  
Tel: (305) 356-7550  
Fax: (305) 933-9970  
Email: mstein@hlglawyers.com

## ALSO PRESENT:

CHADD SCHLOTTER  
PAUL WAGNER

Page 5

1 P-R-O-C-E-E-D-I-N-G-S  
2 5:05 p.m.  
3 WHEREUPON,  
4 DALE STEPHEN HARROD  
5 having been called as a witness by Counsel for  
6 the Plaintiff, and having been duly sworn, was  
7 examined and testified as follows:  
8 DIRECT EXAMINATION  
9 BY MR. RING:  
10 Q Please state your full name.  
11 A Dale Stephen Harrod.  
12 Q Steven with a "V"?  
13 A P-H.  
14 Q The right way.  
15 And where do you work?  
16 A I'm currently consulting.  
17 Q For? Do you have more than one  
18 client?  
19 A Yes.  
20 Q Do you do any work at the present  
21 time for a company The Useful, LLC?  
22 A No.

Page 6

1 Q For a company called World Avenue  
 2 USA?  
 3 A No.  
 4 Q Or a company called Niutech, LLC?  
 5 A No.  
 6 Q Have you in the past consulted or  
 7 worked for any of those three?  
 8 A I worked for Niutech.  
 9 Q When did you start and finish?  
 10 A August 2005 to August 2006.  
 11 Q In this deposition, you are  
 12 represented by counsel, correct?  
 13 A I am  
 14 Q And that's Mr. Klein, seated next  
 15 to you?  
 16 MR. STEIN: Stein.  
 17 MR. RING: I'm sorry. Stein.  
 18 It's Mark Stein?  
 19 THE WITNESS: Yes.  
 20 BY MR. RING:  
 21 Q And are you represented by any  
 22 attorneys other than Mr. Stein?

Page 7

1 MR. STEIN: You can answer the  
 2 question.  
 3 THE WITNESS: Yes.  
 4 BY MR. RING:  
 5 Q Who else?  
 6 A Greenberg Taurig.  
 7 Q When you left Niutech in August of  
 8 '06, what position did you hold?  
 9 A Vice President of Email Marketing.  
 10 Q Did you hold any other positions  
 11 while at Niutech?  
 12 A No.  
 13 Q What were your duties as Vice  
 14 President of Email Marketing?  
 15 A To run the email channeling.  
 16 Q Was that email sent between and  
 17 among people within the company or from some  
 18 spot in the company to somebody outside?  
 19 A People external to the  
 20 organization.  
 21 Q Okay. So what does the email  
 22 channel mean?

Page 8

1 A We would -- people opted in on the  
 2 co-registration path -- we would send them  
 3 additional offers.  
 4 Q What does "opted in" mean?  
 5 A They provided consent on the co-  
 6 registration path to be contacted.  
 7 Q Was any record kept of the fact of  
 8 opting in?  
 9 A I was not in charge of the co-  
 10 registration path.  
 11 Q Okay. Do you know if there was a  
 12 means by which that opt-in was recorded?  
 13 A I was not in charge of the co-  
 14 registration path.  
 15 Q Okay. I understand you weren't in  
 16 charge, but you might know over the lunch  
 17 counter or the water cooler or you might learn  
 18 some way. I just want to know if you have  
 19 knowledge --  
 20 A I do not know.  
 21 Q Okay. What do you mean by the  
 22 registration or co-registration path?

Page 9

1 A It's a series of landing pages  
 2 that have offers.  
 3 Q What's a landing page?  
 4 A The web page that someone sees  
 5 when they click on a link.  
 6 Q Were those landing pages -- who  
 7 created those landing pages?  
 8 A I do not know.  
 9 Q Do you know whether or not Niutech  
 10 created those landing pages?  
 11 A I do not know.  
 12 Q What are the offers you referred  
 13 to a minute ago?  
 14 A Can you be more specific?  
 15 Q Yes. You said that the co-  
 16 registration path was a series of landing  
 17 pages with offers.  
 18 A Uh-hum.  
 19 Q I just want to know what those  
 20 offers are.  
 21 A I wasn't in charge of the co-  
 22 registration path, so I don't know what offers

Page 22

1 where did you work? Was that iLeap?  
 2 A Correct.  
 3 Q In your work at Niutech, did you  
 4 have occasion to communicate with Niuniu Ji?  
 5 A Yes.  
 6 Q How frequently?  
 7 A We would meet, a minimum, once a  
 8 month, maybe once every other week.  
 9 Q And why would you meet?  
 10 A To discuss the financials of the  
 11 division.  
 12 Q Do you know who your replacement  
 13 was when you left?  
 14 A I do not.  
 15 Q Have you stayed in touch with  
 16 anyone at Niutech since you left?  
 17 A One or two.  
 18 Q Who would that be?  
 19 A Steve Saccone.  
 20 Q And who else?  
 21 A Eric Guimond.  
 22 Q How do you spell his last name?

Page 23

1 A G-U-I-M-O-N-D.  
 2 Q Do you recognize any of the  
 3 following company names? World Avenue USA,  
 4 LLC?  
 5 A Yes.  
 6 Q And how do you recognize that?  
 7 A I believe it was a services  
 8 company established by the same proprietors of  
 9 Niutech.  
 10 Q And how do you know that?  
 11 A That was the common understanding  
 12 within the organization.  
 13 Q And did you understand that entity  
 14 to exist before you left Niutech?  
 15 A I believe it was just being  
 16 established when I left.  
 17 Q Do you know of an entity called  
 18 The Useful, LLC?  
 19 A Yes.  
 20 Q What do you understand it to be?  
 21 A As I worked for Niutech, I don't  
 22 know what The Useful's role was.

Page 24

1 Q Did you have any dealings with  
 2 anyone who worked for The Useful while you  
 3 were working for Niutech?  
 4 A I don't know who was paid under a  
 5 given company. We were pretty much  
 6 encapsulated.  
 7 Q Niutech was?  
 8 A No, the email marketing department  
 9 was.  
 10 Q You have indicated you worked for  
 11 Niutech the entire time you were there. Just  
 12 so I'm clear, did it ever occur that you  
 13 received a paycheck from any entity other than  
 14 Niutech?  
 15 A Never.  
 16 Q And that would apply to the entire  
 17 time you were employed at -- well, let's get  
 18 an address. What physical address was the  
 19 location of your employer when you worked for  
 20 Niutech?  
 21 A I don't recall the address. It  
 22 was in Boca Raton.

Page 25

1 Q Was it on Broken Sound?  
 2 A I believe so.  
 3 Q And that address did not change  
 4 for the entire time you worked for Niutech?  
 5 A It did not.  
 6 Q Who was in charge of the IT  
 7 department while you were at Niutech?  
 8 A I believe it was Marty Torcy.  
 9 Q T-O-R?  
 10 A I don't know the spelling.  
 11 Q Did anyone else besides Mr. Torcy  
 12 wear the hat of IT Chief or Chief Information  
 13 Technology Officer? First of all, what was  
 14 his title?  
 15 A I do not know.  
 16 Q Okay. Did anybody else serve as  
 17 head of the IT department besides Marty Torcy  
 18 during the time you worked for Niutech?  
 19 A Not to my recollection.  
 20 Q Was it your understanding that  
 21 Marty Torcy was the Chief of the IT department  
 22 for Niutech?

Page 26

1 A Marty and I would meet to discuss  
2 my particular needs. Past that, I don't know  
3 what Marty's responsibilities were or who else  
4 was responsible for technology.

5 Q Do you know which corporation he  
6 worked for?

7 A I do not.

8 Q Do you recall the names of any  
9 people who worked in your email department  
10 besides Mr. Saccone and Mr. Harrod?

11 MR. STEIN: He's Mr. Harrod.

12 (Laughter.)

13 BY MR. RING:

14 Q I'm sorry. Mr. Saccone and Mr.  
15 Cardona?

16 MR. STEIN: And I'm sorry, what I  
17 heard him testify to is he's kept in touch  
18 with Mr. Saccone, not that Mr. Saccone worked  
19 in his email department. I don't know if he  
20 did or didn't.

21 MR. RING: Let's find out.

22 BY MR. RING:

Page 28

1 I recall. Okay. Any others?

2 A No. It's been a long time.

3 Q From what location were the emails  
4 sent that were sent by the email department?  
5 And by that, I mean, what town and city? And  
6 state?

7 A Niutech, when I came onboard, did  
8 not have an operational email system, and we  
9 were working out the details. So we, instead  
10 of acquiring servers directly, we leased them  
11 to bring the system online. Also, there were  
12 bandwidth considerations for the co-  
13 registration path. So what city they resided  
14 in, I could not tell you because we leased  
15 them from any number of ISPs.

16 Q Do you recall the names of those  
17 ISPs?

18 A Not offhand, no.

19 Q Do you recall what period of time  
20 the leasing took place?

21 A I don't understand the question.

22 Q You described a situation where

Page 27

1 Q Okay. Did Mr. Saccone work in the  
2 email department while you were there?

3 A He did.

4 Q For what period of time?

5 A Approximately the first six  
6 months.

7 Q And was that under you?

8 A It was.

9 Q And you have already mentioned Mr.  
10 Cardona. Who else worked in that department?

11 A A gentleman by the name of Ben. I  
12 do not recall his last name.

13 Q What position did he hold?

14 A He was a programmer.

15 Q Do you recall any other names?

16 A Evelyn. I do not know her last  
17 name.

18 Q And her position?

19 A I don't recall her position.

20 Q Any others you recall?

21 A I've already -- Eric Guimond.

22 Q That's right, you did give me him,

Page 29

1 Niutech did not have certain capacities, so  
2 you leased servers.

3 A Uh-hum.

4 Q For what period of time were those  
5 servers leased? Are they still being leased  
6 today? At the time you left Niutech, were  
7 they still being leased?

8 A When I left, yes.

9 Q Okay. Does Niutech or did  
10 Niutech, when you were working there, maintain  
11 some servers on its own premises that were  
12 used for the sending of emails, as you've  
13 described?

14 A They did not have the server  
15 capacity or bandwidth to do such.

16 Q So they did not?

17 A Correct.

18 Q And that statement remained true  
19 through the entire time you were working  
20 there?

21 A Yes.

22 Q What records would identify the

Page 46

1 website. You would select -- you would look  
2 at Offer X. If you wanted to engage that  
3 offer, all those assets would be present as  
4 links or you would copy/paste. It would say,  
5 "Approved Subject lines", "Approved From  
6 lines", and they might give you two or three  
7 of them to select from.

8 Q Okay. Now the word "approved" is  
9 a word that's applied by whom?

10 A The advertiser.

11 Q So the advertiser is, basically,  
12 providing Niutech with pre-approved content  
13 for the email?

14 A Correct.

15 Q Is that fair? Okay. And once  
16 Niutech, while you were there, once Niutech  
17 received this information from the advertiser,  
18 then what was the next step in putting  
19 together the promotion or the campaign?

20 A We would ensure that the HTML was  
21 proper and would render properly for users  
22 receiving it, correct any minor structure

Page 47

1 issues, while not changing the content. We  
2 would, then, test it to a small group of  
3 individuals to see what those metrics were.

4 Q What do you mean by "render  
5 properly"?

6 A If you've ever received an email  
7 by which the pictures were broken or the text  
8 was all together, it's not rendering or being  
9 displayed to the end-user as it should.

10 Q And what is the purpose of the  
11 HTML code in the email?

12 A To display pictures and text to  
13 the end-user.

14 Q How did -- strike that.

15 Who was the small group used for  
16 the preliminary test you described?

17 A Depending upon the offer, they may  
18 be a random sample of data or a targeted  
19 sample of data. In the hypothetical AARP, you  
20 would obviously want to engage people who were  
21 older than 50 years old.

22 Q And where did the data consisting

Page 48

1 of email addresses for those people come from?

2 A The co-registration path.

3 Q That would be a co-registration  
4 path that had generated some lead information,  
5 is that correct?

6 A Yes.

7 Q And that was co-owned by whom?

8 A It was owned by the company.

9 Q Niutech?

10 A Yes.

11 Q So that list of people was part of  
12 a larger list maintained by Niutech, is that  
13 right?

14 A Yes.

15 Q Did Niutech maintain more than one  
16 list?

17 A It wasn't list-based. The data  
18 was stored in a database and accessed as  
19 needed.

20 Q And that database contained lead  
21 information on prospective customers, is that  
22 correct?

Page 49

1 A No.

2 Q What did it contain?

3 A That database contained  
4 information that customers had typed in  
5 themselves on the co-registration path.

6 Q And that database was used for  
7 what?

8 A Well, then, in our department,  
9 email marketing.

10 Q How many emails were sent in each  
11 campaign?

12 A It varied.

13 Q From what to what?

14 A Ten thousand to 2 million.

15 Q What was the size of the  
16 database --

17 A I do not know.

18 Q -- in terms of number of records?

19 A I do not know.

20 Q What was the format?

21 A I do not know.

22 Q Do you know if it was an SQL, by

Page 62

1 campaigns.

2 Q And those campaigns would consist

3 of anywhere from 10,000 to 2 million emails

4 each?

5 A In the case of an email of 2

6 million, then we are probably looking at 1 or

7 2 million.

8 Q Per day?

9 A Per day.

10 Q Could you get out two campaigns in

11 a day that consisted of 2 million emails

12 intentional or intended targets each?

13 A The systems were capable of it.

14 Q What systems were you talking

15 about?

16 A IDEA.

17 Q And that IDEA software was hooked

18 up to servers located offsite?

19 A Correct.

20 MR. RING: Take a short break.

21 (Whereupon, the foregoing matter

22 went off the record at 6:08 p.m. and went back

Page 63

1 on the record at 6:10 p.m.)

2 BY MR. RING:

3 Q Mr. Harrod, do you know what part

4 of the building was occupied by the Publisher

5 Services department?

6 A I don't know where they were

7 located.

8 Q Do you know whether they were, in

9 fact, in the same building with your

10 department?

11 A I don't; I don't know.

12 Q Do you know if Niutech had any

13 other office space besides the Broken Sound

14 address where you worked at the time you

15 worked there?

16 A They had a fulfillment warehouse

17 down the street.

18 Q How far down the street?

19 A Three blocks.

20 Q How do you know that?

21 A Because we had company functions

22 there.

Page 64

1 Q Okay. Do you know, in fact, that

2 there was a Publishers Services department at

3 the time you worked at Niutech?

4 A Yes.

5 Q How do you know that?

6 A In meetings with various other

7 department heads it was brought up.

8 Q And did someone from the

9 Publishers Services department attend those

10 meetings?

11 A This would have been more along

12 the lines of Publishers Services did this type

13 of, these numbers, those types of things, but

14 I had no direct contact with them.

15 Q And as a result of these meetings

16 where the word "Publishers Services" came up,

17 you did not happen to meet anyone from

18 Publishers Services?

19 A I don't recall. I don't; I just

20 don't recall.

21 Q Okay.

22 A I mean there was a lot of people

Page 65

1 that worked at that company.

2 Q All right.

3 MR. RING: Your witness.

4 MR. SAUNDERS: Give us a second.

5 (Whereupon, the foregoing matter

6 went off the record at 6:11 p.m. and went back

7 on the record at 6:19 p.m.)

8 CROSS-EXAMINATION

9 BY MR. SAUNDERS:

10 Q Mr. Harrod, you mentioned that you

11 worked for a company, iLeap?

12 A Yes.

13 Q At one point in time, I think you

14 said they franchised to ISPs?

15 A Correct.

16 Q Those ISPs, did they use spam

17 filters?

18 A Yes.

19 Q Common practice for ISPs to use

20 spam filters?

21 A Yes.

22 Q Good practice for ISPs to use spam